

STATE OF MICHIGAN
COURT OF APPEALS

SHANNON M. THERRIEN,

Plaintiff-Appellee,

v

CRYSTAL ADAMS-KREUGER, LASERGRAFT
COSMETIC SURGERY CENTER and
LAWRENCE D. CASTLEMAN, M.D.,

Defendant-Appellants,

and

F. DE LA CRUZ, M.D.,

Defendant.

UNPUBLISHED
December 2, 2003

No. 241792
Wayne Circuit Court
LC No. 01-122844-NH

Before: Cooper, P.J., and Markey and Meter, JJ.

METER, J. (*dissenting*).

I respectfully dissent and would reverse the trial court's decision to set aside the order of dismissal. As noted in the majority opinion, one of the conditions that must be satisfied before a trial court can set aside an order of dismissal entered under MCR 2.102(E) is the following: "the motion to set aside the dismissal was filed within 28 days after notice of the order of dismissal was given" See MCR 2.102(F)(3). The clerk sent plaintiff's counsel notice of the entry of the order of dismissal on October 21, 2001, but plaintiff did not file her motion to set aside the order of dismissal until February 19, 2002. Accordingly, plaintiff did not satisfy the condition required by MCR 2.102(F)(3).

I disagree with plaintiff's argument that the order of dismissal could have been reasonably interpreted to refer only to defendant Robert Grafton and that therefore the time for filing the motion to set aside the order of dismissal was extended until plaintiff learned of the encompassing nature of the dismissal. The order referred to the case in general and listed Grafton's name simply as the first listed defendant. The condition in MCR 2.102(F)(3) is not dependent on whether the recipient properly understood the order of dismissal. Because plaintiff did not satisfy all the conditions necessary to have the order of dismissal set aside, the trial court erred in granting her motion.

Moreover, I find no merit to the additional arguments plaintiff raises on appeal.

I would reverse.

/s/ Patrick M. Meter